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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 JAYSON MICHAEL BABBITT,

11 Defendant.

Case No. 2:19-cr-00240-KJD-VCF

ORDER

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13 Before the Court for consideration is the Report and Recommendation (#98) containing
14 the findings and recommendations of Magistrate Judge Cam Ferenbach entered December 10,
15 2020, recommending that Defendant's Motion to Dismiss for Unconstitutionally Vague Statute
16 (#67) be denied. Defendant filed Objections (#101) to the Report and Recommendation to which
17 the Government replied (#109).


18 The Court has conducted a de novo review of the record in this case in accordance with
19 28 U.S.C. § 636(b)(1) and LR IB 3-2. The Court determines that the Report and
20 Recommendation (#98) containing the findings and recommendations of Magistrate Judge Cam
21 Ferenbach entered December 10, 2020, should be **ADOPTED** and **AFFIRMED**.

22 First, Defendant may not assert a void-for-vagueness facial challenge. See Kashem v.
23 Barr, 941 F.3d 358, 377 (9th Cir. 2019). Further, an as-applied challenge fails based on the facts
24 of this action. Second, the statute is not unconstitutionally vague or overbroad on its face,
25 because it gives fair notice of the conduct it punishes. See United States v. Kuzma, 967 F.3d 959,
26 970-72 (9th Cir. 2020) (phrase "designed to shoot" is not unconstitutionally vague). Further,
27 Defendant's post-Kuzma argument that the phrase "single function of the trigger" is vague also
28 fails as identified by the Report and Recommendation. Defendant's attempt to parse out the word

1 “function” ignores the word that modifies it, “single”. The Court must give effect to each word
2 of the statute. See Duncan v. Walker, 533 U.S. 167, 174 (2001) (quoting United States v.
3 Menasche, 348 U.S. 528, 538-39 (1955)). Though the Report and Recommendation did use cases
4 that can be distinguished, that distinction merely goes to the weight of the authority rather than to
5 the entire merit of the Report and Recommendation. Further, while reference to the legislative
6 history is not necessary, because the phrase “single function of the trigger” is not ambiguous,
7 reference to it merely adds additional credence to the determination that it is not
8 unconstitutionally vague. See Pub. Citizen v. U.S. Dep’t of Justice, 491 U.S. 440, 466 (1989);
9 MCI Telecomms. Corp. v. Am. Tel. & Tel. Co., 512 U.S. 218, 228 (1994). The Court would
10 come to the same conclusion without reference to the legislative history.

11 IT IS THEREFORE ORDERED that the Magistrate Judge’s Report and
12 Recommendation (#98) containing the findings and recommendations of Magistrate Judge Cam
13 Ferenbach entered December 10, 2020, are **ADOPTED** and **AFFIRMED**, and Defendant’s
14 Motion to Dismiss for Unconstitutionally Vague Statute (#67) is **DENIED**.

15 Dated this 7th day of May, 2021.

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18 Kent J. Dawson
19 United States District Judge
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